IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

GRAND JURY, SPRING TERM, 2004

IN RE: Shooting of Arrie L. Cherry on April 29, 2004 by Leon County Sheriff's Department Deputies Paul Connell and Lelani Marsh

IN THE NAME OF AND BY THE AUTHORITY OF THE STATE OF FLORIDA

NO TRUE BILL PRESENTMENT

THIS MATTER came before the Grand Jury to review the facts and circumstances into the shooting on April 29, 2004 by two deputies of the Leon County Sheriff's Department causing minor injury to Arrie L. Cherry to determine if the use of deadly force was lawful within the provisions of Chapter 776, Florida Statutes and consistent with the findings of the criminal and internal affairs investigations conducted by their agency. We have heard sworn testimony from multiple witnesses regarding how officers are trained in the use of force, why warning shots or shots to injure are dangerous and not practical, how shootings are investigated to include or exclude criminal offenses, investigation by internal affairs for violations or compliance with authorized departmental policies and procedures, and from the deputies involved who appeared voluntarily. We concur with the sheriff's department conclusion that this was a justifiable use of deadly force.

Chapter 394 of Florida Statutes, known as "The Florida Mental Health Act" or "The Baker Act," states in section 394.463(1) that a person may be taken to a receiving facility for an involuntary examination if there is reason to believe that she is mentally ill and because of her mental illness unable to determine for herself whether examination is necessary, and without care or treatment is likely to suffer from neglect or refuse to care for herself, that such neglect or refusal poses a real and present threat of substantial harm to her well-being, or there is a substantial likelihood that without care or treatment the person will cause serious bodily harm to herself or others in the near future as evidenced by recent behavior.

Section 394.463(2)(a)2 states a law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person to the nearest receiving facility for examination. Therefore, it was the intention of the deputies initiate an involuntary examination of Arrie L. Cherry pursuant to the "Baker Act." Their attempts to detain her were lawful under the Florida Mental Health Act and taking a person into custody is akin to effecting an arrest except the intent is for evaluation rather than incarceration.

Florida Statute 776.05 states a law enforcement officer need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. The officer is justified in the use of any force which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest.

Florida Statute 776.051(1) states a person is not justified in the use of force to resist an arrest by a law enforcement officer who is known, or reasonably appears, to be a law enforcement officer. The evidence shows that Ms. Cherry initiated deadly force by firing her .32 caliber pistol at the officers.

Florida Statute 776.012 states a person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself, herself or another or to prevent the imminent commission of a forcible felony. "Forcible felony" is defined in Florida Statute 776.08 to include murder, aggravated assault, aggravated battery, and any felony which involves the use or threat of physical force or violence against any individual.

CONCLUSION

Leon County Deputy Sheriffs Paul Connell and Lelani Marsh reasonably believed that use of deadly force was necessary to defend themselves from bodily harm as authorized by the provisions of Chapter 776, Florida Statutes, and there was no violation of departmental policies or procedures.

THEREFORE, with a quorum present and twelve or more jurors in agreement with this decision, we say nothing further in these premises.

RESPECTFULLY SUBMITTED this 14th day of July, 2004.

[redacted]

Foreperson

Attest: [redacted]